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FILED IN THE  
 U.S. DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON

JUL 21 2005

JAMES R. LARSEN, CLERK  
 DEPUTY  
 SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON

KENNETH L. WEAVER et al.,	)	No. CV 04-3075-JLQ
Plaintiffs,	)	PROTECTIVE ORDER
	)	RE POSTMORTEM PHOTOS
vs.	)	
NATIONAL ASSOCIATION OF STATE	)	
FORESTERS, et al.	)	
Defendants.	)	
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EVELYN CRAVEN et al.,	)	No. CV-04-0243-JLQ
Plaintiffs,	)	PROTECTIVE ORDER
	)	RE POSTMORTEM PHOTOS
vs.	)	
NATIONAL ASSOCIATION OF STATE	)	
FORESTERS, et al.	)	
Defendants.	)	
<hr/>		
KATHIE FITZPATRICK et al.,	)	No. CV-04-3123-JLQ
Plaintiffs,	)	PROTECTIVE ORDER
vs.	)	RE POSTMORTEM PHOTOS
ANCHOR INDUSTRIES, INC., et al.	)	
Defendants.	)	

1 PROTECTIVE ORDER

2 Plaintiffs have jointly moved this court for a protective order regarding restrictions on  
3 the use of postmortem photos, digital images and videos. Plaintiffs have also jointly moved  
4 this court for protection from violation of secondary dissemination of potential criminal  
5 information under RCW 10.97.

6 This court has reviewed the motion of plaintiffs and proposed protective order, the  
7 responses filed by all defendants herein and Weaver's reply and revised proposed order.

8 IT IS HEREBY ORDERED THAT:

9 (1) This Protective Order applies to all parties in the cases captioned *Weaver v. NASF*  
10 (No. CV-04-3075-JLQ), *Craven v. NASF* (No. CV-04-0243-JLQ), and *Fitzpatrick v.*  
11 *Anchor Indus.* (No. CV-04-3123-JLQ). The purpose of this order is to permit  
12 disclosure of "postmortem views" (described below) to all parties while protecting  
13 the privacy of the Plaintiffs, and to set forth the duties of the parties producing  
14 "postmortem views" and the duties of the parties receiving "postmortem views".  
15 (2) This Protective Order applies to production of all postmortem photographs, digital  
16 images, and videotapes (hereinafter "postmortem views") of decedents, including  
17 but not limited to postmortem views at any autopsy or those taken at the fire scene  
18 which show the decedents' bodies. All parties shall provide all of their postmortem  
19 views of the decedents to the other parties in this litigation. At this time, plaintiffs  
20 have acknowledged possession of the following items:  
21  
22 1. Autopsy images.  
23  
24 2. Postmortem Views from the Thirtymile site which contain  
25 views of the decedents from the following sources:  
26  
27 a. Okanogan County Sheriff's Office

1                   b. Washington State Patrol  
2                   c. Glenn Brauteset (formerly of WSP)  
3                   d. Postmortem photos produced by Fitzpatrick (source  
4                   unknown) including FITZ 000361 through FITZ  
5                   000371, and those also identified as FITZ 0372\_008.  
6                   pdf through FITZ 0372\_019.pdf, and also FITZ 05323  
- FITZ 05336.

7 (3) A party producing any Postmortem Views shall, in a conspicuous manner, mark or  
8 have marked by T-Scan each item to be protected with the words "Subject to  
9 Protective Order". Where the item consists of more than one page, each page shall  
10 be marked. The party shall specify to T-Scan each item and page to be marked  
11 "Subject to Protective Order" and arrange to have T-Scan distribute to other parties  
12 each said item with a conspicuous marking of "Subject to Protective Order". Any  
13 item of any Postmortem View already produced and not marked "Subject to  
14 Protective Order" may be removed from the production and replaced by a copy of  
15 the page marked "Subject to Protective Order". Each party shall notify all other  
16 parties of such removal and replacement and arrange with T-Scan to accomplish  
17 each such change.

18 (4) Once a party receives any Postmortem View item, it is the responsibility of that party  
19 to ensure that each person to whom it provides the Postmortem Views are aware of  
20 the terms of this protective order and that such persons agree to abide by the terms  
21 therein.

22 (5) Postmortem Views may be disclosed to the Court, case witnesses, potential case  
23 witnesses, court reporters, deposition videographers, and to the parties in the  
24 above-captioned cases along with their attorneys, staff, consultants, experts,  
25 adjusters, investigators, employees, and others working on behalf of a party to this  
26  
27

case. Postmortem Views shall not otherwise be disclosed, except as set forth herein. In particular, no postmortem photos, digital images and videos of the decedents may be placed on the internet in a manner which can be viewed by the general public or published in any other public forum (including but not limited to any media, seminars or conferences) for any purpose, unless expressly permitted by counsel representing the estate of the particular deceased firefighter depicted in the postmortem view, or by the personal representative of the particular deceased firefighter depicted in the Postmortem View, or unless provided for in this Order.

- (6) If a party desires to disclose Postmortem Views to a third-party (herein defined to mean any person or entity other than persons or entities identified in paragraph (5)), that party must give two weeks written notice to the counsel representing the estate of the particular deceased firefighters depicted in the Postmortem View. If any party objects, the objecting party must file a motion for protective order in the court within 30 days of receipt of the written notice, or otherwise such objection is waived.
- (7) Prior to a third-party gaining access to any Postmortem Views, a third-party shall read a copy of this Protective Order and sign the form attached as Exhibit A. A copy of the signed form shall be provided to each plaintiff's counsel and to each defendant's counsel within thirty days of the date of signing.
- (8) Any person shall produce any Postmortem Views when required by subpoena, court order, statute, regulation, or as otherwise required by law.
- (9) Postmortem Views may be used for any purpose in this litigation, including as an exhibit in a deposition or court document, so long as each Postmortem View that is filed with the Court is filed under seal. This means that if an item is to be filed under seal, the parties will mark the document FILED UNDER SEAL and file an

1 unredacted copy with the Court, along with a redacted copy for the public court file.

2 See Procedures for Electronic Case Filing, I. A. (3). If a party inadvertently  
3 transmits a postmortem photo, digital image or video without seal, the party shall  
4 notify the court and shall follow the prescribed court procedures for correcting the  
5 error, as promptly as possible.

6 (10) All parties will produce any documents and postmortem images they have obtained  
7 from law enforcement agencies, including those subject to the provisions of RCW  
8

9 10.97. No party will be penalized for distribution of a document or postmortem  
10 image subject to RCW 10.97 when they distribute a document or postmortem image  
11 pursuant to this Order.

12 (11) Any party objecting to an initial designation of Postmortem Views, including

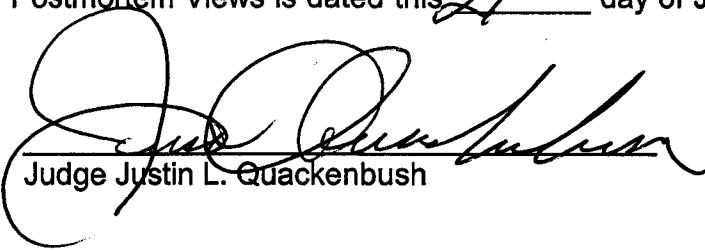
13 objections to portions of the designations of multi-page documents, shall notify the  
14 designating party. The objecting and the designating party shall promptly confer in  
15 an attempt to resolve their differences. If the designating and objecting parties are  
16 unable to resolve their differences, the designating party shall have twenty-one (21)  
17 days from receipt of the objection to file with the court a motion for protective order.

18 All documents and transcripts initially designated as Postmortem Views shall  
19 continue to be subject to this order unless and until the court rules otherwise. If a  
20 designating party elects not to make a motion for a protective order with respect to  
21 documents to which a written objection has been made, it shall be deemed to have  
22 withdrawn its designation, and it shall produce copies of such documents without  
23 the Postmortem Views designation if so requested.

24 (12) Within 90 days of the conclusion of this lawsuit, all Postmortem Views shall be  
25 returned to the producing party or destroyed. If the Postmortem Views are to be

1           returned, the receiving party shall collect, assemble and return all such Postmortem  
2           Views, including all copies, extracts and summaries thereof in the possession of the  
3           receiving party, its counsel or other authorized recipients, but not including copies,  
4           extracts or summaries that contain or constitute attorney's work product, which shall  
5           be destroyed. The receiving party shall certify in writing that this paragraph of the  
6           Postmortem Views has been complied with.

7           This Protective Order RE Postmortem Views is dated this 21<sup>st</sup> day of July,  
8  
9           2005.

10             
11           Judge Justin L. Quackenbush

12           Presented by:

13           COLE, LETHER, WATHEN & LEID, P.C.

14             
15           Mark S. Cole, WSBA #6583  
16           Attorney for Rexam Defendants

**"EXHIBIT A"**

## **ACKNOWLEDGEMENT OF PROTECTIVE ORDER FORM**

I, \_\_\_\_\_, have read the document entitled **Protective Order Regarding Postmortem Views ("Postmortem Views")** signed by Judge Justin L. Quackenbush, a copy of which is attached.

7 By signing below I agree to be bound by the terms of the Protective Order. I agree  
8 that I will not disseminate, publish, or otherwise share any Postmortem Views of the  
9 decedents in this case including autopsy and fire scene photos, digital images and videos,  
10 in violation of the Protective Order.

I further understand and agree that if I do disseminate, publish, or otherwise share any Postmortem Views, in violation of the Protective Order, I will be subject to penalty by the Court.

A copy of this document shall be as valid as the original.

Date:

Signed:

**Printed Name:**